The Battle for Internet Freedom: (4)
Defamation

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This is the fourth in a series of articles presenting the legal foundations of Internet expression.

Can you post insulting comments about someone on your Web site?

Sure you can, as long as they are either opinions or factually based. However, posting lies about people may open the person doing the posting to civil proceedings for damages.

Defamation is communication that damages reputation and good name in a community. Speaking false nasty stuff about other people is called slander; writing false nasty stuff about people is called libel.< http://injury.findlaw.com/defamation-libel-slander/defamation-law-made-simple.html >

Successful civil action for defamation requires the following components:

- The communication must be demonstrably false.
- Someone other than the person making the utterance must have received the defamatory message.
- The content must expose the victim to hatred, contempt or ridicule; or it must tend to injure the target in his or her work.

Public officials are restricted in bringing defamatory actions against members of the public; such officials have the additional burden of proving actual malice.< http://www.eff.org/issues/bloggers/legal/liability/defamation > The definition of public figures normally applies to people who have chosen to speak or act in public but can include people who may not personally choose to be considered such (e.g., people involved in accidents or scandals).

One of the landmark cases reducing the rights of public figures to sue for libel is New York Times v Sullivan (1964)< http://www.law.cornell.edu/supct/html/histories/USSC_CR_0376_0254_ZS.html > which was argued before the Supreme Court of the United States. The Justices ruled that “A State cannot, under the First and Fourteenth Amendments, award damages to a public official for defamatory falsehood relating to his official conduct unless he proves ‘actual malice’ – that the statement was made with knowledge of its falsity or with reckless disregard of whether it was true or false.”

Does the First Amendment of the US Constitution protect defamation? Not really: the First Amendment applies to government restrictions on speech, not restrictions by private organizations or individuals. Thus when a moderator on a privately run discussion board establishes rules for civil discourse and tries to bar a repeat offender from continued offensive postings, it’s pointless to shriek about First Amendment rights – they don’t apply to a private discussion group that has no government funding or other involvement. But the First Amendment provides no inalienable right to disseminate defamation.
Opinions are not usually considered defamatory even if they are irritating, offensive or actually cause perceived harm. On the other hand, civil tort as a remedy for damage caused by speech is not precluded by the First Amendment.

The Internet has made posting defamatory materials much easier than in the days of broadsheets and printed pamphlets produced at the defamer’s expense; it’s even possible to post audio and video clips defaming anyone one wishes to attack (YouTube< http://www.youtube.com/ > is full of them). Little or no skill is required for such postings, so many more people are able to voice their vitriolic opinions or spread their possibly unfounded bile across the mental landscape. Figuring out who these people are is not necessarily easy; not all Web sites require any kind of identification other than an e-mail address, and many don’t bother sending a confirmation e-mail to verify that the e-mail address exists. In any case, free e-mail services of< http://email.about.com/od/usingfreeemaitlothetmax/Get_the_Most_Out_of_Your_Free_Email_Account.htm > allow anyone to create any number of unverified and untraceable e-mail accounts that can be used once and deleted with minimal trace.

Even if one can trace a defamer, there’s a good chance that the individual posting the nasty lies has little or no money for any kind of meaningful monetary recovery. So who is responsible for defamatory content – or indeed any content – posted on Internet venues where more than one person is posting material?

In the next article, I’ll review three famous cases in which defamatory materials led to lawsuits – and the implications for people and organizations running the infrastructure of the World Wide Web.

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You can freely download class notes on defamation as part of the lecture (#8) on cyberstalking, spam and defamation in the lectures< http://www.mekabay.com/courses/academic/norwich/cj341/lectures/index.htm > folder for my CJ341 Cyberlaw & Cybercrime classes.

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